

# Crimea beyond rules

Thematic review of the human  
rights situation under  
occupation

Issue N° 2

Right to property



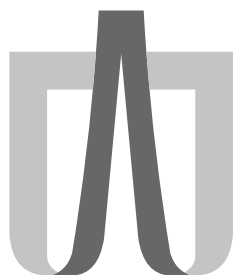
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РЕГІОНАЛЬНИЙ ЦЕНТР ПРАВ ЛЮДИНИ  
**RCHR**  
РЕГІОНАЛЬНИЙ ЦЕНТР ПРАВ ЧЕЛОВЕКА

**Regional Center of Human Rights** – NGO, the nucleus of which consists of professional lawyers from Crimea and Sevastopol, specializing in the field of international human rights law.

[rchr.org.ua](http://rchr.org.ua)



**Ukrainian Helsinki Human  
Rights Union**

**Ukrainian Helsinki Human Rights Union** - non-profit and non-political organization. The largest association of human rights organizations in Ukraine, which unites 29 NGOs, the purpose of which is to protect human rights.

[helsinki.org.ua](http://helsinki.org.ua)



**CHROT** - expert-analytical group, whose members wish to remain anonymous.

Some results of work of this group are presented at the link below :

[crimeahumanrights.org](http://crimeahumanrights.org)

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**Our partners of the publication are:**



**Українська асоціація  
міжнародного права**

Ukrainian Public Organization

"Ukrainian Association of International Law,"



Institute of International Relations of Taras Shevchenko  
National University of Kyiv



Dear readers,

Crimean events at the beginning of 2014 have challenged the post-war system of international security. They stirred up the whole range of human emotions - from the loss of vital references to the euphoria, from joyful hope to fear and frustration. Like 160 years ago, Crimea attracted the attention of the whole Europe. In this publication we have tried to turn away from emotions and reconsider the situation rationally through human values and historical experience . We hope that the publication will be interesting to all, regardless of their political views and attitudes towards those events.

S. Zayets  
R. Martynovskyy  
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## Introduction

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By signing on 1 August, 1975 the Helsinki Final Act which concluded the Conference on Security and Cooperation in Europe (URL: <https://www.osce.org/mc/39501?download=true>), European countries recognized the inviolability of their frontiers and committed themselves to refrain from any actions that constitute the threat or use of force, as well as recognized inadmissible making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law. The countries of Europe proclaimed the principle that no such occupation or acquisition would be recognized as legal.

Events in the Crimea in February-March 2014 and the occupation of the territory of Ukraine by the Russian Federation is the first example of large-scale violations of the provisions and principles of the Final Act in Europe.

The occupation and the subsequent annexation of Crimea presented the world with a new challenge. The situation in the region is fundamentally different from the unrecognized territories like Transnistria, Abkhazia, North Ossetia, where external interference is expressed mainly in support of the newly emerged regimes. Some similarities can be observed in the Turkish occupation of Northern Cyprus. However, the current level of economic and informational development of the society, the degree of mutual integration and many other similar aspects make Crimea stand out among other cases. All this, as well as the fact that the occupation of Crimea happened without active military clashes and preceding internal conflicts in that territory, has put before the world a number of new questions that still remain to be answered.

In order to analyze the current situation, to find solutions to emerging issues and to ensure observance of human rights in the context of the occupation the efforts of the team of human rights activists, experts and scholars from various organizations were united. Namely, the effort of Regional Centre for Human Rights (URL: <http://rchr.org.ua/>), Ukrainian Helsinki Human Rights Union (URL: <http://helsinki.org.ua/>), Institute of International Relations of Taras Shevchenko National University of Kyiv (URL: <http://uail.com.ua/>) and Ukrainian Association of International Law (URL: <http://uail.com.ua/>).

The review, prepared by joined efforts of our team and invited experts, aims to help the international community, human rights organizations, international and national bodies and structures as well as anyone who wants to understand the human rights situation in Crimea.

Each review has a theme and includes a number of analytical articles, references to international regulations and standards relating to the chosen themes as well as the legislation adopted in respect of Crimea by Ukraine, the Russian Federation and illegally established authorities of Crimea and Sevastopol. The review also includes an analysis of prospects for potential complaints or those already filed with the European Court or other international human rights bodies.

International law assumes that the occupation is a temporary regime. We are also convinced that the need for such reviews is temporary. Looking to the future with hope, we believe that the main task of these materials should be apprehension of what had happened and generalization of experience in order to prevent further human rights violations in Crimea or other regions of the world.

### **The Universal Declaration of Human Rights**

(URL: [http://zakon4.rada.gov.ua/laws/show/995\\_015](http://zakon4.rada.gov.ua/laws/show/995_015))

URL: <http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng>)

*The Universal Declaration of Human Rights was adopted on 10 December 1949 and is an act of the so-called "soft law". However, compliance with the obligations under the Declaration is the subject of continuous monitoring by the international community, even if its provisions are not reflected in the texts of other, more binding international instruments. In particular, along with other documents, the Declaration provisions are the foundation of the Universal Periodic Review (UPR), and its violation can be the reason for individual appeals to the United Nations Human Rights Council in accordance with the Human Rights Council Resolution 5/1 of 18 June 2007 (former procedure 1503). The text of the relevant provisions is reproduced in full:*

#### **Article 17**

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

### **CONVENTION WITH RESPECT TO THE LAWS AND CUSTOMS OF WAR ON LAND (Hague Convention IV)**

(URL: <https://www.icrc.org/rus/resources/documents/misc/hague-convention-iv-181007.htm>)

URL: <https://www.icrc.org/ihl/INTRO/195>)

*The Convention was signed on 18 October 1907 by 15 States, still it had not been ratified and did not enter into force as an international treaty. However the references to the provisions of the Convention were used during the Nuremberg Tribunal. The applicability of these provisions was also confirmed by the International Court of Justice in the Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory of 9 July 2004 (p. 98) (URL: [http://www.icj-cij.org/homepage/ru/advisory/advisory\\_2004-07-09.pdf](http://www.icj-cij.org/homepage/ru/advisory/advisory_2004-07-09.pdf), URL: <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&case=131&p3=4>). These provisions prohibit the arbitrary deprivation of property and establish the conditions under which such deprivation is deemed possible.*

#### **Article XXIII**

[...] In addition to the prohibitions provided by special Conventions, it is especially forbidden:

[...] (g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war;

#### **Article XLVI**

[...] Private property cannot be confiscated.

#### **Article LV**

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

#### **Article LVI**

The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.

All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

### **THE IV GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR**

([http://zakon4.rada.gov.ua/laws/show/995\\_154](http://zakon4.rada.gov.ua/laws/show/995_154))

[http://www.un.org/arabic/preventgenocide/rwanda/text-images/Geneva\\_CivilPersons](http://www.un.org/arabic/preventgenocide/rwanda/text-images/Geneva_CivilPersons))

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*The Convention was adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August, 1949. It was signed by the Ukrainian SSR on 12.12.1949 and ratified on 03.07.1954. The entry into force for the USSR was on 01.03.1955. The Soviet Union ratified the Convention by the Regulation of the Presidium of the Supreme Council of the USSR on 17.04.1954 with reservations on signature. The Convention came into force for the USSR on 10.11.1954.*

#### **Article 53**

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

#### **PROTOCOL NO.1 TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

(URL: [http://zakon1.rada.gov.ua/laws/show/994\\_535\\_](http://zakon1.rada.gov.ua/laws/show/994_535_)

URL: <http://www.refworld.org/docid/3ae6b38317.html> )

*The European Convention was adopted on 04. 11.1950 and originally contained no guarantees for protection of property. Relevant provisions were supplemented to the Convention by the Protocol No. 1 only on 20.03.1952. Ukraine signed this Protocol on 19.12.1996, ratified it on 17.07.1997 and the entry into force happened on 11.09.1997. The Russian Federation in a similar manner signed the Protocol on 28. 02.1996 and ratified them on 30.03.1998. The date of entry into force is 05.05.1998. The text of the relevant provisions is reproduced in full:*

#### **Article 1 – Protection of property**

1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

2. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

#### **DECLARATION ON THE HUMAN RIGHTS OF INDIVIDUALS WHO ARE NOT NATIONALS OF THE COUNTRY IN WHICH THEY LIVE, ADOPTED BY THE RESOLUTION 40/144 OF THE UN GENERAL ASSEMBLY ON 13 DECEMBER 1985**

[http://www.un.org/ru/documents/decl\\_conv/declarations/not\\_nationals\\_rights.shtml](http://www.un.org/ru/documents/decl_conv/declarations/not_nationals_rights.shtml)

<http://www.un.org/documents/ga/res/40/a40r144.htm>)

Part 2 (d) of Art. 5 determines that foreigners have the right to own property alone as well as in association with others, taking into account the limitations of domestic law. Art. 9 contains a provision on the prohibition of arbitrary deprivation of an alien of his or her lawfully acquired assets.



### Ukraine

#### The Constitution of Ukraine

(URL: <http://goo.gl/S3ir3A>)

URL: <http://www.ccu.gov.ua/en/doccatalog/list?currDir=12083>)

The Constitution of the independent Ukraine was adopted on 28.06.1996. Art. 41 of the Constitution guarantees everyone the inviolability of property rights and prohibits unlawful deprivation of property rights. The exception is eminent domain for reasons of social necessity in conditions of martial law or a state of emergency, subject to full reimbursement of the cost of such an object.

#### The Civil Code of Ukraine

(URL: <http://zakon4.rada.gov.ua/laws/show/435-15>)

URL: <http://www.commerciallaw.com.ua/images/stories/enlaw/Civil%20Code.pdf>)

The Code is in force since 01.01.2004. Besides the general aspects regarding property rights, which are guaranteed by the Constitution of Ukraine, part 6 of Art. 319 of the Civil Code provides that the state is obliged not to interfere in the exercise of the right of property by an owner. Art. 321 of the Civil Code except unlawful deprivation of property rights also prohibits the restriction of property rights. The expropriation of property rights is allowed only for reasons of social necessity, subject to full reimbursement of the cost of such a facility on the basis of legislation.

#### The Law of Ukraine “On Securing the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine”

(URL: <http://zakon2.rada.gov.ua/laws/show/1207-18>)

URL: <http://goo.gl/tGln5>)

The law was adopted on 15 April 2014 and came into force on 27 April 2014. Part 1 of Art. 11 of the Law guarantees the protection of property rights and a legal regime of the property in the temporarily occupied territory. According to Part 2 of Art. 11 all subjects of property rights retain the right of ownership, which existed at the beginning of the temporary occupation. Acquisition and termination of ownership of the property takes place outside the temporarily occupied territory in accordance with the laws of Ukraine (part 4 of Art. 11).

#### The Law of Ukraine "On Creation of the Free Economic Zone "Crimea" and on Peculiarities of Exercising Economic Activity in the Temporarily Occupied Territories of Ukraine”

(URL: <http://zakon4.rada.gov.ua/laws/show/1636-18>)

The law was adopted on 12 August 2014 and entered into force on 27 September 2014. In accordance with Article 8 of the Law the State guarantees the procedure for granting protection of property and non-property rights of individuals and entities on the territory of FEZ "Crimea". In addition to the general provisions on the preservation of the rights of ownership of the property and registration of the transfer of ownership in another territory of Ukraine, it is also stated that transactions made by a person who is in the ownership or under the control of the occupying State are not permitted (Art.13.3). When concluding these types of transactions, the contracts are considered null and void and can not be executed.

#### The Resolution of the Cabinet of Ministers of Ukraine "On Approval of the procedure for entering and exit from the temporarily occupied territory of Ukraine» N° 367 of 4 June 2015

(URL: <http://zakon4.rada.gov.ua/laws/show/367-2015-%D0%BF>)

This Procedure came into force on 06.10.2015. Para. 21 (4) and para. 23 (5) determine the presence of ownership of the properties, which are located in the temporarily occupied territory of Ukraine, as a condition for obtaining a special permit by a foreigner or a person without citizenship for the purpose of entry into the temporarily occupied territory.

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**The Decision of the National Security and Defense Council of Ukraine of July 20, 2015 "On the Status of Implementation of Measures Concerning the Protection of Property Rights and Interests of the State of Ukraine in Connection with the Temporary Occupation of the Territory of Ukraine"**  
(URL: <http://www.president.gov.ua>)

The decision deals with the maintaining records of losses that were caused to the State by occupation of Crimea and Sevastopol (para.2 part 1). National Security Council ordered the Cabinet of Ministers to apply measures to intensify the recovery of losses caused by the temporary occupation of the territory of Ukraine. Ministry of Justice of Ukraine was urgently requested to organize the provision of legal assistance to Ukrainian citizens, whose rights, including property ones, were violated as a result of the occupation of the territory of Ukraine.

### **Construction Amnesty**

Since October 2009 in Ukraine the so-called "Construction amnesty" has been periodically conducted, in which citizens have the opportunity to commission the illegally constructed property( See for example the Resolution of the Cabinet of Ministers of Ukraine N°1035 dd. 9 September 2009 "On approval of the interim order of adoption in the operation of private houses farmsteads, cottages and houses with outbuildings": [URL: http://zakon5.rada.gov.ua/laws/show/1035-2009-%D0%BF](http://zakon5.rada.gov.ua/laws/show/1035-2009-%D0%BF) ) Initially, the amnesty was extended to the property that was constructed till 31 December 2008, but later the effect of these norms has been expanded for the period until 2011.

## **The Russian Federation**

### **The Constitution of the Russian Federation**

(URL: <http://constitution.kremlin.ru/> ,URL: <http://www.constitution.ru/en/10003000-01.htm>)

The new Constitution of the Russian Federation came into force on 25. 12.1993. Article 8 of the Constitution guarantees the protection of all forms of ownership in the Russian Federation. Part 1 of Art. 35 guarantees the right to private property. Everyone is guaranteed the right to have property, possess it, use and dispose of individually or jointly. Part 3 of Art. 35 prohibits deprivation of property rights, except for expropriation of property for public use subject to reimbursement of its cost and the availability of a court decision.

### **The Civil Code of the Russian Federation**

(URL: <http://base.garant.ru/10164072/> URL: <http://www.russian-civil-code.com/>)

The Civil Code of the Russian Federation is in force since 01.01.1995. Additionally to general provisions which guarantee the property rights (part 1 of Art. 235), part 2 of Art. 235 of the Code contains the a list of cases where deprivation of property (foreclose on the property for the obligations, the alienation of immovable property in connection with the seizure of the land because of its improper use, requisition, confiscation, etc.) is permitted. Therewith, para. 9 part 2 of Art. 235 contains a provision on the nationalization under the law of property owned by citizens and legal persons with compensation of the value of property and other damages in court (Art. 306).

### **The Federal Law of 05.05.2014 N°124- FZ "On Amendments to the Federal Law "On introduction of the first part of the Civil Code of the Russian Federation " and Art. 1202 of the third part of the Civil Code of the Russian Federation"**

(URL: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_162572/](http://www.consultant.ru/document/cons_doc_LAW_162572/))

According to Part 1 of Art. 1 of the Law, the Art. 19 of the Civil Code is amended relative to the re-registration under the Russian law of legal entities located on the territory of the Republic of Crimea and Sevastopol, as well as their inclusion in the single state register of legal entities till 01.01.2015 (later the term was extended until 01.03.2015). In case such entities were not re-registered they have the right to carry out activities on the territory of the Russian Federation solely as from the date of becoming a branch (representative office) of a foreign legal entity (part 7, Art. 1). As of 12.12.2014 only 12,752 legal entities out of total number of 52,885 were able to be re-registered (P. 13, Annual Report of the Human Rights Ombudsman of the Russian Federation for 2014 [URL: http://goo.gl/SLa480](http://goo.gl/SLa480))

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**The Resolution of the Government of the Russian Federation of 27 April 2015 N°399 "On some issues of the state registration of motor vehicles and trailers to them in the State Traffic Safety Inspectorate of the Ministry of Internal Affairs of the Russian Federation in the Republic of Crimea and Sevastopol"**

( [URL: http://goo.gl/pk8UmX](http://goo.gl/pk8UmX) )

The Resolution defines the peculiarities of the state registration of vehicles, owned by residents of Crimea and Sevastopol (with Russian citizenship) and legal entities (registered until 18 March 2014) who do not have documents proving their ownership of the vehicle. Registration deadline is set till 1 January 2018. While registering, the passport for the vehicle is not issued. However, in August 2015 a draft resolution was designed on the reduction of the term for re-registering of vehicles till 1 April 2016. It will be possible to re-register the vehicle after 1 April 2016, but only on a paying basis. It is important to note that the operation of vehicles that have been re-registered is prohibited by the legislation of Ukraine. Thus, these vehicles can not enter the mainland Ukraine.

([URL: http://www.gibdd.ru/news/federal/1821206/?print=Y](http://www.gibdd.ru/news/federal/1821206/?print=Y))

## **Crimea and city of Sevastopol**

**Resolution of the State Council of the Republic of Crimea on the independence of Crimea N° 1745-6/14 of 17 March 2014**

([URL: http://crimea.gov.ru/content/uploads/files/sbornik/2014-03.pdf](http://crimea.gov.ru/content/uploads/files/sbornik/2014-03.pdf))

Paragraph 3 of the Resolution determines that the property and funds of the state bodies of Ukraine on the territory of Crimea are transferred to the state bodies of the Republic of Crimea. According to paragraphs 6 and 7 of the document, the entire state property, property of trade union and other public organizations of Ukraine, located as of the date of adoption of this Resolution on the territory of the Republic of Crimea, becomes the property of subsidiaries of relevant organizations located in the Republic of Crimea, and if those are not available, the state property of the Republic of Crimea.

**Resolution of the Supreme Council of the Autonomous Republic of Crimea on the approval of the Regulation N° 1734-6/14 on People's Militia of Crimea of 11 March 2014**

([URL: http://crimea.gov.ru/textdoc/ru/6/act/1734pr.pdf](http://crimea.gov.ru/textdoc/ru/6/act/1734pr.pdf))

Para. 2 of Section II indicates that the people's militia detachments in cooperation with law enforcement officials are involved in the activities to ensure the security of citizens' property as well as the safety of the legal entities' property.

### **The Constitution of the Republic of Crimea**

([URL: http://www.rg.ru/2014/05/06/krim-konstituciya-reg-dok.html](http://www.rg.ru/2014/05/06/krim-konstituciya-reg-dok.html))

The document was adopted on 11 April 2014 and came into force on 13 April 2014. Article 28 guarantees everyone the right to own property, possess, use and dispose of it both individually and jointly. The inviolability of property is guaranteed and the expropriation of property for public use is permitted on condition of prior and fair compensation by court order only.

**Law of the Republic of Crimea "On peculiarities of regulation of property and land relations on the territory of the Republic of Crimea" of 31 July 2014 N°38-ZRK**

([URL: http://crimea.gov.ru/textdoc/ru/6/act/38z.pdf](http://crimea.gov.ru/textdoc/ru/6/act/38z.pdf))

The Law was adopted on 31 June 2014 and came into force on 12 August 2014. Para. 3 Part 1 of Art. 2 states that all lands except private and municipal property are recognized as the property of the Republic of Crimea. Herewith a restraint is established on the alienation of land plots which prohibits foreign citizens and foreign legal entities from selling or otherwise transferring interest in their property to another foreign citizen, stateless person or a foreign legal entity. Art. 5 establishes the obligation to re-register the property as required by the legislation of the Russian Federation till 01.01.2017. According to Art. 4 of the Law in the case of re-registration of the property before that date the owners lose the right to property.

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**Law of the Republic of Crimea "On peculiarities of buying-out of property in the Republic of Crimea" of 8 August 2014 N°47-ZRK**

(URL: <http://crimea.gov.ru/textdoc/ru/6/act/47z.pdf>)

The law came into force on 12 August 2014. It sets out the grounds (prevention of danger to life and health of the population in the Republic of Crimea; maintenance of the life-sustaining facilities; evacuation of people in emergency circumstances with the need to use this property as an object having a particular social, cultural and historical value) for the buying-out of property for the needs of the Republic of Crimea subject to prior and fair compensation for the value of property (Art. 1). The list of such objects shall be approved by the Council of Ministers of the Republic of Crimea (Art. 3) on the basis of an offer to buy out the property submitted by executive authorities of the Republic of Crimea and local authorities (Art. 4). The amount of compensation is set by the Council of Ministers of the Republic of Crimea on the basis of the evaluation report conducted by an organization with accreditation/license for the territory of the Russian Federation.

(URL: <http://crimea.gov.ru/act/13015>)

**Nationalization of property in Crimea and Sevastopol.**

According to our calculations based on official Decisions there were nationalized more than 330 companies, institutions and organizations, state-owned and owned by trade unions, as well as more than 280 enterprises of private ownership. According to other studies this figure is about 4,000 companies. In particular, with regard to state-owned property see: Resolution of the State Council of the RC N° 2042-6/14 (URL: <http://crimea.gov.ru/ua/act/12077>) N° 1950-6/14 (URL: <http://crimea.gov.ru/act/11932>), N° 2079-6/14 (URL: <http://crimea.gov.ru/act/12112>), N° 2084-6/14 (URL: <http://crimea.gov.ru/act/12117>), N°1757-6/14 (URL: <http://crimea.gov.ru/act/11761>), N° 1837-6/14 (URL: <http://crimea.gov.ru/act/11842>), N° 1948-6/14 (URL: <http://crimea.gov.ru/act/11930>); N° 2267-6/14 (URL: <http://crimea.gov.ru/act/12328>), N° 2026-6/14 (URL: <http://crimea.gov.ru/act/12055>), No 18366/14 (URL: <http://crimea.gov.ru/en/act/11841>), Regulation of the Council of Ministers of the RC N° 1119-r (URL: [http://rk.gov.ru/rus/file/pub/pub\\_235197.pdf](http://rk.gov.ru/rus/file/pub/pub_235197.pdf)), N° 783-r (URL: [http://rk.gov.ru/rus/file/pub/pub\\_257963.pdf](http://rk.gov.ru/rus/file/pub/pub_257963.pdf)). Regarding privately owned property see: Resolution of the State Council of the RC N°2085-6/14 (URL: <http://crimea.gov.ru/act/12118>), Regulation of the Government of Sevastopol N°118-PP (URL: <https://sevastopol.gov.ru/docs/253/3903/>) и N°123-PP (URL: [https://sevastopol.gov.ru/files/iblock/1b5/convert\\_jpg\\_to\\_pdf.net\\_2015\\_05\\_29\\_09\\_07\\_12.pdf](https://sevastopol.gov.ru/files/iblock/1b5/convert_jpg_to_pdf.net_2015_05_29_09_07_12.pdf)), Regulation of the Council of Ministers of the RC N°316 (URL: This document is available only on previous order in the data-base\_ "Garant": <http://ivo.garant.ru/#/document/23702505/paragraph/3>). Two above mentioned regulations of the Government of Sevastopol are described in more detail below. (URL: [http://alushta.krm.sudrf.ru/modules.php?name=sud\\_delo&srv\\_num=1&name\\_op=doc&number=79194435&delo\\_id=1540005&new=0&text\\_number=1](http://alushta.krm.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=doc&number=79194435&delo_id=1540005&new=0&text_number=1))

**The Regulation "On some issues of property nationalization" N°123 - ПП of 28 February 2015**  
(URL: <https://goo.gl/tNxsMf>)

The Regulation came into force on 28 February, 2015. According to it, movable and immovable property, property rights and intangible assets of 3 companies previously privately owned shall be transferred to the state ownership of the Federal City of Sevastopol. In addition, the airport building and non-residential building were also transferred to the city.

**The Regulation "On some issues of property nationalization" N°118- PP dd. 02.28.2015**  
(URL: <http://www.c-inform.info/news/id/19940>)

The Regulation came into force on 28 February 2015. The property of 12 enterprises previously privately owned, which had not brought their charter documents in accordance with Russian law and had not filed an application about inclusion in the single state register of legal entities until 1 March 2015, was transferred to the state ownership of Sevastopol. Among these companies are PJSC "Sevmorzavod", LLC "Ship repairing complex "Sevmorsudoremont".

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### Demolition of unauthorized constructions.

According to official statements of authorities working in the occupied Crimea, in Simferopol there were found 450 objects, in Simferopol region - 590, in Sudak – 338, in Yalta - 225 and in Yevpatoria - 36. Among these objects there were found 358 foundations, 590 foundations with walls, 217 finished houses and 474 houses in which people live. At the same time the local authorities are taking steps to demolish these constructions, which are usually carried out without a court decision and/or without observance of the rights of the owners. Examples of normative acts on these matters may be the decision of local authorities.

(URL: <http://www.c-inform.info/news/id/19940>)

See for example URL: [http://simfmo.rk.gov.ru/rus/file/pub/pub\\_254255.pdf](http://simfmo.rk.gov.ru/rus/file/pub/pub_254255.pdf)

or URL: [http://simfmo.rk.gov.ru/rus/file/pub/pub\\_251494.pdf](http://simfmo.rk.gov.ru/rus/file/pub/pub_251494.pdf))

## Crimean cases: Examples of Violations and Argumentation

*In modern world the occupation of the territory and moreover its annexation will inevitably lead to the violation of right to property. Here are some typical examples of such violations.*

**As a result of the occupation of the Crimean Peninsula by the Russian Federation starting from 1 April, 2014 in Crimea and Sevastopol the Ukrainian legal environment was replaced by the Law of Russia (see “The Federal Constitutional Law of 21.03.2014 No. 6 -FKZ “On acceptance of the Republic of Crimea into the Russian Federation and the creation of new constituent entities of the Russian Federation – the Republic of Crimea and the Federal City of Sevastopol”). Therefore the procedure for real estate transactions has changed and now it is necessary to re-register all real estate objects in accordance with the procedures in force in the Russian Federation. This applies to all owners who possessed real property on the Crimean Peninsula as of March 2014. Non-registration of real property in accordance with the Russian procedure prevents the further disposition of this property. Those wishing to re-register the property formed long queues and thus the immediate disposition of real property, which would be recognized by the authorities of the Russian Federation, was impossible.**

The demand to register the property is in its elf an interference with the right to property and is qualified in Article 1 of the First Protocol as control over the use of property. Thus, this situation may be the subject-matter for complaint to the European Court.

The evaluation of potential complaints to the Court filed on these grounds can be made in terms of existence of common interest that could justify the introduction of such measures, as well as in terms of the proportionality of the measures. It is obvious that the assessment of these issues can be affected by the judgement of how lawful was the occupation of Crimea and Sevastopol by the Russian Federation.

**In the first issue of the Review "Crimea beyond rules", dedicated to the liberty of movement, there were considered several examples when different people for various reasons were denied the admission to the territory of Crimea by the authorities of the Russian Federation. In particular this is the case of O. Khomenok, M. Dzhemilev and R. Chubarov, I. Yüksel and others. Such actions of the Russian authorities are not only a violation of the liberty of movement, but also restriction of one's access to property.**

The restriction of the access to the property, which is located in the occupied territory, was considered in the case *Loizidou v. Turkey* (Judgement of 18 December 1996; Application no.15318/89) (URL: <http://hudoc.echr.coe.int/eng?i=001-58007>). In this case the applicant owned plots of land in Northern Cyprus, but after the occupation was deprived of access to them. Since the applicant retained title to these plots of land, the ECHR found that there had been a continuing violation of the right to use property.

Thus, it is highly probable that the Court might apply this precedent in the Crimean cases.

**The most blatant violation of the right to property is the demolition by the occupation authorities of the 16- storied building at Cape Crystal in Sevastopol. The demolition took place following the judicial decision(\*). The decision was executed by means of blowing up the building on 27 December 2014 at the third attempt (\*\*).**

This case is interesting due to the fact that the Russian authorities have tried to make it look like a legitimate act, justifying their actions by the court decision. The court decision was motivated by reference to the fact that in the process of its construction the permits conditions issued by the Ukrainian authorities had been violated. At the same time, the court in its decision stated that the violations indicating a threat to life and health of people had not been proved at trial.

A reference to the provisions of Article 53 of the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949) (URL: <https://www.icrc.org/ihl/INTRO/380>) can be used as an argument in this case. This provision, in particular, prohibits any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons or to the State, or to other public authorities, or to social or cooperative organizations, except where such destruction is rendered absolutely necessary by military operations.

Pursuant to this prohibition, many decisions and actions that could be considered acceptable for a State on its territory become unlawful if they are committed in the territory under occupation. Since the Geneva Convention (IV) severely limits the number of legitimate reasons by military purposes, it is obvious that in the present case a violation of Art. 1 of the First Protocol to the European Convention can be recognized.



(\*) Decisions at first instance:

URL: [http://sevastopol.arbitr.ru/sites/sevastopol.arbitr.ru/files/pdf/919\\_320\\_14-%D0%A0%D0%A4\\_1.pdf](http://sevastopol.arbitr.ru/sites/sevastopol.arbitr.ru/files/pdf/919_320_14-%D0%A0%D0%A4_1.pdf)

URL: [http://sevastopol.arbitr.ru/sites/sevastopol.arbitr.ru/files/pdf/919\\_320\\_14-%D0%A0%D0%A4\\_2.pdf](http://sevastopol.arbitr.ru/sites/sevastopol.arbitr.ru/files/pdf/919_320_14-%D0%A0%D0%A4_2.pdf)

URL: [http://sevastopol.arbitr.ru/sites/sevastopol.arbitr.ru/files/pdf/919\\_320\\_14-%D0%A0%D0%A4\\_3.pdf](http://sevastopol.arbitr.ru/sites/sevastopol.arbitr.ru/files/pdf/919_320_14-%D0%A0%D0%A4_3.pdf)

URL: [http://sevastopol.arbitr.ru/sites/sevastopol.arbitr.ru/files/pdf/919\\_320\\_14-%D0%A0%D0%A4\\_4.pdf](http://sevastopol.arbitr.ru/sites/sevastopol.arbitr.ru/files/pdf/919_320_14-%D0%A0%D0%A4_4.pdf)

Decisions at first instance:

URL: <http://21aas.arbitr.ru/node/13332>

(\*\*) Execution of the decision:

URL: [http://sevastopol.arbitr.ru/sites/sevastopol.arbitr.ru/files/pdf/919\\_320\\_14-%D0%A0%D0%A4\\_1.pdf](http://sevastopol.arbitr.ru/sites/sevastopol.arbitr.ru/files/pdf/919_320_14-%D0%A0%D0%A4_1.pdf)

URL: [http://sevastopol.arbitr.ru/sites/sevastopol.arbitr.ru/files/pdf/919\\_320\\_14-%D0%A0%D0%A4\\_2.pdf](http://sevastopol.arbitr.ru/sites/sevastopol.arbitr.ru/files/pdf/919_320_14-%D0%A0%D0%A4_2.pdf)

URL: [http://sevastopol.arbitr.ru/sites/sevastopol.arbitr.ru/files/pdf/919\\_320\\_14-%D0%A0%D0%A4\\_3.pdf](http://sevastopol.arbitr.ru/sites/sevastopol.arbitr.ru/files/pdf/919_320_14-%D0%A0%D0%A4_3.pdf)

**On 6 July 2015 the authorities destroyed the market in the Kozlov Street in Simferopol. Implementation of this action took place with the support of the police who cordoned off the area the night before so as none of the owners could even have the possibility to take out their property. During the operation there were dismantled altogether about 360 trade pavilions (URL: <http://ombudsman.rk.gov.ru/rus/index.htm/news/308538.htm> ). The ground for the dismantling was the resolution of the administration of the city of Simferopol of 5 June 2015 No. 382. The market itself was established on the ground of the decision of the Simferopol city council session No. 648 of 28 April 2000. The issue of the dismantling of the market was not considered in the court and the sole ground for this dismantling is the above mentioned resolution No. 382.**

The permission from local authorities for the construction of the market and its long-term existence at the acquiescence of the authorities regardless of the construction conditions of this market grant the owners of pavilions the rights that are protected by Article 1 of the First Protocol.

**Individuals who have made bail as a security in criminal proceedings are now deprived of the opportunity to get their money back. Russian authorities refer to the fact that these funds were deposited in the special account access to which was closed by the Ukrainian authorities soon after Crimea was declared the Russian territory. The Ukrainian authorities, in their turn, refer to the fact that the power to pay the funds belong to relevant state institutions, the functioning of which was stopped as a result of the occupation of Crimea by the Russian Federation.**

This example relates not only to bails, but also to any other rights of claim that arose prior to the beginning of the occupation (for example, regarding the debts in pension payments, wages of public sector employees, etc.) and are due for payment in the following period. It is obvious that these citizens had very specific requirements for the state, the existence of which not being denied.

Since the authorities of each State have fairly logical reasoning, it is hard to predict the outcome of complaints in such cases. The preparation of complaints to the ECHR is also complicated. In particular, in order to achieve efficient results it is necessary to file a complaint to the authorities of both countries and to exhaust all remedies available under the law of both Ukraine and the Russian Federation.

That is, the greatest difficulty in the cases like this is not just to prove the violation of the applicant's rights, but to establish the state which should be responsible for this violation.

**Many people and legal entities faced difficulties while evacuating their property from the occupied territory to the mainland Ukraine or vice versa while moving the property to the peninsula. The Russian authorities extended the state border regime to the Crimean isthmus starting from 1 April 2014. The Ukrainian authorities deny the fact that the state border is at this point. However, having no control over the territory of the peninsula, the Ukrainian authorities adopted a special law (the Law of Ukraine "On Creation of the Free Economic Zone "Crimea" and on Peculiarities of Exercising Economic Activity in the Temporarily Occupied Territories of Ukraine"), which stated that the movement of goods between the occupied territory and the mainland Ukraine should be treated as import or export. Pursuant to these circumstances common customs regime of the state border is functioning on the Crimean isthmus from both sides, which regulates the movement of goods as export or import.**

This regime was extended also to the property that was legally purchased and imported into the territory of Ukraine and was in the territory of Crimea before the occupation. Thus, moving of this property became impossible or requires payment of customs duties. Inability to move property relates, for example, to civilian weapons that was legally owned by citizens of arms shops, to cultural and historical values which are stored in private collections and so on.

In this case there is an interference with the right to property in the form of control over the use of property. Whereas this requirement for payment of customs duties and charges is a disproportionate interference with the right to property when it comes to property previously lawfully imported into the territory of Ukraine. Similarly, the ban on the export of property from Crimea or its import to the peninsula, when it comes to property which before the occupation could be freely moved within the territory of Ukraine, may also be considered as a disproportionate interference with right to property.

Thus, both on the part of Ukraine and the occupied peninsula there was quite a sharp change in the conditions of the property use, which was not accompanied by a sufficiently long transitional period. Such interference can be defined as a disproportionate restriction of the right to property.

In view of the recent initiative on the introduction of commercial blockade of Crimea it is necessary to note that the above mentioned applies solely to the property which was owned as of March 2014. Henceforth, the acquisition of the property took place in the new conditions of the occupation and the obligations of the States relative to the rights to this property follow different logic.

**All legal entities registered on the territory of Crimea and Sevastopol are subject to mandatory registration in accordance with Russian law. In some cases, under the pretext of a formal inconsistency of the submitted documents the authorities of the Russian Federation denied to re-register certain legal entities. Subsequently, the property of these legal entities was nationalized.**

As in many other cases, actions of the authorities of the Russian Federation in this context could be defined as interference with the right to property in the form of control over the use of property. The property in this case is the business as an opportunity to engage in income-generating activities, networking (clients), the whole part of assets, etc.

However, the subsequent nationalization of the property is much more blatant interference with the right to property.

#### **Nationalization.**

The subject of protection of property rights could be raised at the international level only at the European Court of Human Rights. International Covenant on Civil and Political Rights does not contain any provisions which would repeat the provisions of Article 1 of the First Protocol to the European Convention. At the same time, such a question can only be put in the context of violation of private property right. International human rights standards do not envisage the protection of the state property.

It is obvious that nationalization is deprivation of property in the context of the analytical algorithm, used by the European Court. Other aspects of this algorithm involve the assessment of common interest in this intervention, the presence of the ground/ order prescribed by law and proportionality of the intervention to the interest that is pursued. As a rule, the problems arise even at a stage of detection and evaluation of the common interest. An additional argument in favor of the applicant in these cases might be references to the provisions of international humanitarian law - in particular, to The Geneva Convention relative to the Protection of Civilian Persons in Time of War (IV) and the Convention with respect to the Laws and Customs of War on Land, that prohibit seizure of property except for military needs. These provisions limit the discretion of the state much stronger compared to situations where the intervention takes place inside the country.

(URL: [http://zakon4.rada.gov.ua/laws/show/995\\_154](http://zakon4.rada.gov.ua/laws/show/995_154))

URL: [http://www.un.org/ru/documents/decl\\_conv/conventions/geneva\\_civilian.shtml](http://www.un.org/ru/documents/decl_conv/conventions/geneva_civilian.shtml)

URL: <https://www.icrc.org/ihl/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5> URL: <https://www.icrc.org/rus/resources/documents/misc/haque-convention-iv-181007.htm>

URL: <https://www.icrc.org/ihl/INTRO/195>)

#### **Demolition of unauthorized constructions**

(See for example: URL: <http://sevastopol.su/news.php?id=80470> или URL: <http://qha.com.ua/ru/obschestvo/v-jigulinoi-rosche-razdavili-samostroi-pod-kontrolem-politsii-i-omon/149333/>)

The prospects for cases in this category depend on the factual circumstances. According to reports in mass media there were demolished both houses where the owners actually lived and buildings made in order to "stake out" a landplot (the so-called "makeshift huts"). It is also important for how long this construction existed and the relationship that has developed with the authorities over this construction.



In general, in these cases the conclusions of the European Court in the case *Öneryildiz v. Turkey* (Application No. 48939/99; Grand Chamber Judgement of 30/11/2004<sup>1</sup>) could be applied. In this case the Court came to the conclusion that the existence of the right of the state to demolish an unauthorized construction is not infinitely extended in time and should be implemented with a reasonable speed. If, however, the state authorities having a long-term possibility did not resort to the implementation of this law, an owner of a construction may qualify for protection under Article 1 of the First Protocol to the Convention.

(URL: <http://hudoc.echr.coe.int/eng?i=001-67614>)

### **Contestation by judicial procedure of the legality of the state or municipal property privatization.**

Often, to legitimize the seizure of property acquired before the occupation authorities resort to a judicial procedure. However, such claims are often imposed after a sufficiently long period of time. Representation of interests in such cases is performed by the prosecutor's office. Such situations are most common in cases of privatization of land or other property. In fact, the judicial procedure in no way affects the assessment of the situation. One of the arguments in these cases may be a reference to the principle of legal certainty.

**Ukrainian legislation does not provide for extra-judicial mechanism for registration of inheritance rights, if a hereditary case was opened before the start of the occupation, but the certificate had not been issued according to the legislation of Ukraine.**

This situation on its own cannot be qualified as a violation of property rights. However, here we observe the signs of discrimination when in order to protect one's rights the heir has to resort to more complex (judicial) procedure, whereas all who did not submit an application for acceptance of inheritance before the beginning of the occupation, can apply for the inheritance right through the offices of a notary.

### **Blocking of bank accounts.**

By the Resolution of the National Bank of Ukraine N° 699 of 3 November 2014 everyone who had registered the place of residence (in common parlance - registration) in Crimea and Sevastopol, as well as enterprises registered in this territory, were equated to non-residents. This greatly limited the access of Crimean residents to banking services.

In December 2014, the resolution was supplemented by a norm which expressly envisaged the suspension of transactions on such accounts, the need for renewal of the bank account, and so forth. This situation is a clear interference with the property right. In addition, in this case there is also a reason to assume the existence of discrimination based on place of residence, when the possibility to exercise the right depends on the passport endorsement. Paragraph 1 of the Resolution was cancelled by the Decree of Kiev Administrative Court of Appeal of 1 September 2015 on the case N° 826/17587/14. As a result it became impossible to apply the above mentioned restrictions. However, in practice, some banking institutions continue to operate as if the Resolution remained in force. Since at this stage of the involvement of the state in violation of the law is virtually unprovable (regulation has been repealed), it is required to resort to appeal the actions of specific banks in order to protect the rights.

### **Other cases of interference with the property right can be :**

- the ban for foreigners to own the property (for example, in relation to land or media resources);
- the situation when regulations and standards that prevent the possibility to own the property extend to the territory of Crimea (for example, in the case of ownership of real estate in the coastal strip, when the width of this strip increases and the existing property becomes "beyond the law", if it limits the possibility of property disposal) ;
- demand to pay customs duties while importing into the territory of the peninsula or exporting out of it the property acquired prior to the occupation ;

- 
- termination of the property right for the weapon or self-protection means, possession of which is permitted in accordance with Ukrainian legislation, but which are prohibited for civil turnover by Russian legislation;
  - inability to finish the initiated privatization;
  - the loss of ownership of the property owned by legal entities, which have not passed the procedure of re-registration under the laws of the Russian Federation, etc.

*The list of examples is not exhaustive. More and more examples of violations of the right to property can be provided. This also concerns execution/non-execution of court decisions held prior to the occupation; enjoyment of the right to privatize land or apartments by citizens who started this procedure and were unable to complete it because of the occupation; issues related to bank deposits of Crimean residents, etc. More details on this subject will be given on the web-site [crimeahumanrights.org](http://crimeahumanrights.org).*

### **The right to private property in the context of a continuing occupation of Crimea by the Russian Federation.**

This article is dedicated to the analysis of some aspects of the implication of international human rights standards for the protection of property rights. It focuses on the precedents of the European Court, which may be relevant when considering the Crimean affairs.

The full text of this article is available on the website [crimeahumanrights.org/](http://crimeahumanrights.org/)

### **Property of the Occupied Territories and Proper International Law.**

The article analyses principal customary and treaty norms of contemporary international law governing the status and regime of various types of property situated on the occupied territories. Inter alia, it looks into main international rules and jurisprudence regarding state and private, movable and immovable property. The article also analyses international legal regulation of some special categories of state property such as educational institutions and cultural property.

The full text of this article is available on the site [crimeahumanrights.org/](http://crimeahumanrights.org/)

### **Violation of the property right as a result of application of Russian legislation in Crimea.**

This article looks at some examples of violations of property rights within the meaning of Article 1 of the First Protocol to the European Convention, which arose due to a conflict between the laws of Ukraine and those of the Russian Federation under the occupation of Crimea in early 2014.

The full text of this article is available on the site [crimeahumanrights.org/](http://crimeahumanrights.org/)

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**"CRIMEA BEYOND RULES. Thematic review of the human rights situation under occupation."** - Vol. 2 - Right to property / Edited by S. Zayets, R. Martynovskyy, D. Svyrydova. – Kyiv, 2015. – 20 p. The publication is aimed at representatives of international organizations, diplomatic missions, government bodies and professional legal community, who need information on the practical application of international human rights standards under occupation of the Crimea.

Thematic Review is published in electronic form and is for free distribution. The materials are available in three languages - Ukrainian, Russian and English. Use of Content is permitted with the obligatory reference to the source and authorship. If the author of the material is not explicitly stated, all rights to the material belong to the expert-analytical group CHROT. The materials included in the publication, as well as other materials on the topic can be found on the website <http://crimeahumanrights.org/>

The partners of this publication are Ukrainian public organization "Ukrainian Association of International Law" and the Institute of International Relations of Taras Shevchenko National University of Kyiv.

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**Other issues of the series.**

By the time this issue is published, the following issues has already came out or are ready for publication:

- Issue 1. The right to liberty of movement and freedom to choose residence.
- Issue 2. Right to property.
- Issue 3. Right to citizenship (under preparation).
- Issue 4. Freedom of expression (under preparation).

These and other materials devoted to the observance of the international standards of human rights by the authorities of both Ukraine and the Russian Federation with reference to the occupation of the Crimean peninsula could be found on eh website <http://crimeahumanrights.org/>

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